IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

(1) Writ Petition No. 889 of 2006

M/s Rajrajeshwari Builders
a partnership firm duly
registered under the Partnership
Act, 1932 having its office
at Panchvati, Harbjanji Lane
M.G.Road, Ghatkoper (East)
Bombay 400 077 ..Petitioners

vs.

The Municipal Corporation of
city of Thane, governed by
the provisions of the Bombay
Provincial Municipal Corporation
Act, 1949, having its office at
Mew Municipal Building
Panchpakhadi, Thane (W) ..Respondents

Shri P.K.Dhakephalkar i/b Shri S.U.Dhakephalkar
for petitioners.
Shri R.S.Apte for respondent.

(2) Writ Petition No. 890 of 2006

M/s Nirmal Enterprise
a duly registered partnership
firm having its registered
office at Navrang Shopping
Arcade, 4th floor, Gokhale Road
Thane (W) ..Petitioners

vs.

The Municipal Corporation of
city of Thane, governed by
the provisions of the Bombay
Provincial Municipal Corporation
Act, 1949, having its office at
Mew Municipal Building
Panchpakhadi, Thane (W) ..Respondents

Shri P.K.Dhakephalkar i/b Shri S.U.Dhakephalkar
for petitioners.

Shri R.S.Apte for respondent.

(3) Writ Petition No. 891 of 2006

M/s Bilstrong Builders Pvt.Ltd.
a duly incorporated company
under the Companies Act,1956
having its registered office
at 360, Station Road,Thane (W) ..Petitioners

Vs.

The Municipal Corporation of
City of Thane governed by the
provisions of Bombay Provincial
Municipal Corporation Act,1949
having its office at New
Municipal Building, Panchpakhadi
Thane (W) ..Respondents

Shri P.K.Dhakephalkar i/b Shri S.U.Dhakephalkar
for petitioners.
Shri R.S.Apte for respondents.

(4) Writ Petition No.893 of 2006

Shri Sanjiv Manohar Karambelkar
Age 50 years, Adult, Indian
Inhabitant, having place of
business at Shivner Building,
Gokhale Road, Naupada,Thane (W) ..Petitioners.

Vs.

1. The Municipal Corporation of
City of Thane governed by the
provisions of Bombay Provincial
Municipal Corporation Act,1949
having its office at New
Municipal Building, Panchpakhadi
Thane (W)

2. The Government of Maharashtra'
through the Collector of Thane ..Respondents

Shri P.K.Dhakephalkar i/b Shri S.U.Dhakephalkar
for petitioners.
Shri R.S.Apte for respondent no.1.

CORAM: S.B.MHASE J.
18th April,2006

ORAL JUDGMENT:

1. Rule. Returnable forthwith. Learned Counsel for the respondents waives service.

2. By consent of both the learned Counsel rule taken up for hearing forthwith.

3. The petitioners in the above referred writ petitions have invoked the power and jurisdiction of this Court under Article 227 of the Constitution of India and thereby have challenged the orders passed below Exh.67 from Special Civil Suit No.694 of 1995 dated 8th December, 2005, Exh.92 from Special Civil Suit No.1064 of 1994 dated 6th December, 2005, Exh.51 from Special Civil Suit No.840 of 1993 dated 16th November, 2005 and Exh.63 from Special Civil Suit No.678 of 1992 dated 7th November, 2005. The petitioners in all these four writ petitions are original plaintiffs from the respective suits and the respondent Municipal Corporation of the City of Thane is the defendant in each of the suits filed by the above referred plaintiffs in the Court of Civil Judge, Sr.Dn.,

thane. The respective petitioner is either owner and/or developer of the lands which are involved in the said suits. The subject matter of each of the suit is a different land. However, all these lands are presently within the limits of the Municipal Corporation of the City of Thane and earlier they were within the limits of Thane Municipality which is subsequently converted into the Corporation. According to each of the plaintiffs, the lands involved in each of the suit is gavthan land and, therefore, as per the D.C.Rules which were existing in the year 1988, permissible F.S.I. was/is 2 and in view of this permissible F.S.I. the defendants/respondents have sanctioned the building plans bearing following numbers as involved in each of the suit.

Spl.Civil Suit No.	Building Permit & commencement certificate No.	Date of certificate
1. 694 of 1995	V.P.No.916/TMC/TDD/626	28.12.1990
2.1064 of 1994	V.P.No.90112/TMC/TDD/318	30.07.1991
3. 840 of 1993	V.P.No.TMC/TDD/622	11.12.1991
4. 678 of 1992	V.P.No.89222	9.11.1989

In view of the above referred building permissions

and commencement certificates of the same date, the plaintiffs had started construction of the buildings and according to the plaintiffs/petitioners most of the work was completed. At this stage, in view of certain modifications in the D.C.Rules and more specifically in the definition of "Gaothan" now the respondents/defendants have started to claim that the lands in respect of which building permissions were granted are not the Gaothan lands and, therefore, FSI upto 2 is not permissible and, therefore, further steps are being taken by the respondents/defendants. Each of the plaintiffs have challenged the acts of the respondents/defendants by filing the above referred suits. There were several grounds raised by the plaintiffs, namely promissory estoppel that the D.C.Rules as amended or clarified in the year 1993 cannot be applied in respect of the plans and buildings which were sanctioned prior to the said date and that the respondents/defendants are giving discriminatory treatment to the plaintiffs since according to the plaintiffs, the defendants/respondents have granted subsequent permissions in respect of similarly situated lands to other developers and owners granting F.S.I.of 2.

It is further case of the plaintiff that similar permissions were granted alongwith the plaintiffs to other developers, however, the action as initiated as against the plaintiffs either was not commenced against other developers and/or even if action was commenced it was dropped at the later stage and thus the plaintiffs are making out a case of discrimination being committed by the defendants/respondents in respect of the building permissions and action to be taken as against the plaintiff and such averments are reflected in each of the plaints filed by the plaintiffs. During the pendency of these suits applciation Exh.67 (Special Civil Suit No.694 of 1995), application Exh.92 (Special Civil Suit No.1064 of 1994), application Exh.51 (Special Civil Suit No.840 of 1993) and application Exh.63 (Special Civil Suit No.78 of 1992) were filed by each of the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint. It requires to be mentioned at this stage that on perusal of the applications and the schedule annexed to the said applications showing the proposed amendment in the suits are ad-verbitum same. Not only that even though the orders passed below each of the above referred exhibits from the suits have been disposed

of on different dates still the orders which have been passed by the Joint Civil Judge, Sr.Dn., Thane are adverbitum same and, therefore, all these matters were clubbed together and being decided together.

4. It is already stated that the plaintiffs have made out a ground of discrimination and, therefore, it is being stated in the amendment application that during the pendency of the present suits, Special Civil Suit Nos.830 of 1993, 834 of 1993, 835 of 1993, 836 of 1993, 693 of 1993, 470 of 1995 and 472 of 1992 were decided by the Civil Judge, Sr.Dn., Thane and those suits were decreed in favour of the plaintiff. According to the plaintiffs, decrees passed in these suits were not challenged by the respondents and thereby the decrees passed in the suit have obtained finality as against the defendants/respondents. In those suits, according to the plaintiffs, lands were Gaothan land as that of the plaintiffs' Gaothan lands and the building permissions were granted by the respondents/defendants permitting FSI 2 and,therefore, the plaintiffs wanted to place on

record that different standards cannot be applied by the respondents/defendants in respect of the plaintiffs' case and, therefore, amendment was proposed. The other aspect which was involved in the amendment is in respect of case of M/s Nalanda Enterprises who is another developer and in whose favour building permission was granted bearing V.P.No.90/101 in the year 1990 granting F.S.I. of 2 and though initially action as like that of the plaintiffs was commenced against the said M/s Nalanda Enterprises but at the subsequent stage the said action has been dropped by the respondents/defendants. All these facts the plaintiffs wanted to bring on record in the respective suits so as to demonstrate the discriminatory treatment on the part of the respondents/defendants and, therefore, amendment application under Order VI Rule 17 was submitted. No doubt all these amendments were factually for the adjudication of the suits. However, all these amendments were opposed by the respondents/defendants and the Civil Judge, Sr.Dn. by order passed below the above referred exhibits on different dates has rejected the amendment applications. The Civil Judge, Sr.Dn.,Thane while rejecting the said amendment application has held

that the plaintiff's suit is based on different set of facts and,therefore, the proposed amendment is not necessary and that the plaintiffs/petitioners may produce the certified copies. The averments which were proposed in respect of grant of permission in favour of M/s Narmada Enterprises were rejected by the Court holding that the fact remains that every proposal is to be accepted or rejected on the basis of the facts of the particular proposal and, therefore, amendment is not necessary. In short, the proposed amendments were rejected on the ground that those cases were decided in the facts of those case and, therefore, amendment is unwarranted.

5. The learned Counsel appearing for the petitioners submitted that the reasons assigned by the Joint Civil Judge, Sr.Dn., Thane for rejecting the above referred applications for amendment of the suits are not just and legal. He submitted that the petitioners/plaintiffs are trying to make out a case of discriminatory treatment being given by the respondents/defendants to the petitioners/plaintriffs. He submitted that the acts and actions of the local authority while implementing the provisions of the D.C.Rules must

be consistent and uniform and similarly situated persons shall be equally treated and such is the obligation on the defendants and to demonstrate that such obligation is not being discharged by the respondents/defendants proposed amendment is being sought by the petitioners/plaintiffs. However, this aspect has deliberately been overlooked by the Joint Civil Judge, Sr.Dn., Thane. The learned Counsel appearing for the respondent Municipal Corporation vehemently opposed the writ petitions and submitted that the order passed by the Joint Civil Judge, Sr.Dn., is perfectly just and legal one and no interference is called for.

6. This Court has gone through the suits, amendment applications, schedule of the proposed amendment and the order passed by the Joint Civil Judge, Sr.Dn., Thane. It has been found by this Court that the case of discrimination is being averred and alleged by the plaintiffs/petitioners in respective suits. It is well settled principle that the respondents/defendants being the local authority and thereby local self Govt. is under the constitutional obligation to treat similarly situated persons equally. If in respect of the lands which are situated in Gaothan or which are

called as mufi land like that of the plaintiffs/petitioners' land and that the building permission granting FSI of 2 has been granted in favour of those persons then the plaintiffs are entitled to be treated equally with them if the plaintiffs prove that they are similarly situated with them in every respect. Whether the facts involved in the decided judgment and in the case of M/s Nalanda Enterprises are similar to that of the plaintiffs/petitioners is a matter of proof when the evidence is taken in the suits. At this stage the plaintiffs are only trying to insert the amendment with the leave of the Court and thereby to amend the pleadings. It is well settled rule of evidence that unless there are pleadings the party cannot lead evidence and ex facie when there is a pleading in respect of the discrimination it becomes abundantly necessary for the petitioners/plaintiffs to give particulars of the discriminatary treatment given by the respondents/defendants and, therefore, in order to supply the particulars in respect of the discrimination the proposed amendment, though vital, is being prayed for by the petitioners/plaintiffs. It cannot be forgotten that the facts which are stated in the proposed

amendment were the facts which had taken place during the pendency of the suits and they were not available for being incorporated in the plaint when the suits were filed. Therefore, it was proper on the part of the petitioners/plaintiffs to incorporate the subsequent events in the plaint so as to defendants to caution and if necessary to explain their conduct. In absence of such opportunity being available to the defendants if material is brought on record then the defendants are likely to be prejudiced. Not only that the evidence which has been placed by the plaintiffs on

record may be discarded since there were no pleadings and the issue to that effect. It cannot also be thrown on the ground that it is not relevant to the facts on issue. Taking into consideration all these aspects, it appears that the petitioners/plaintiffs thought it proper to incorporate the subsequent events in the plaint and, therefore, amendment applications in the respective suits were submitted by each of the plaintiffs. Unfortunately the Joint Civil Judge, Sr.Dn., overlooked all these aspects of the litigation and rejected those applications on the ground that each matter is to be decided on the

facts of the case and, therefore, that cannot be said to be relevant for adjudication of the plaintiffs' case. This view in the facts and circumstances of the present matter is misconceived and requires to be set aside.

6. The Trial Court has also overlooked the facts and circumstances that it is well settled principle of law that the Courts are expected to be liberal in granting amendments basically for the purpose that it is always better to adjudicate all the disputes between the parties in one and the same litigation in order to avoid multiplicity of the litigation between the parties. Therefore, amendment application filed by each of the plaintiffs should have been granted by the Joint Civil Judge, Sr.Dn., Thane.

7. Looked at from any angle to the impugned orders, the impugned orders are unsustainable in law and they are required to be set aside and, therefore, accordingly set aside. Therefore, the following order.

. Writ Petitions are allowed.

. Order below Exh.67 from Special Civil Suit No.694 of 1995, Exh.92 from SpecialCivil Suit No.1064 of 1994, order below Exh.51 from Special Civil Suit No.840 of 1993 and order below Exh.63 in Special CivilSuit No.678 of 1992 are hereby set aside. The applications for amendment in respect of each of the suits are hereby allowed and the plaintiffs are permitted to amend the plaint within a period of two weeks from the date of receipt of this order by the Trial Court.

. Rule is made absolute accordingly.

(S.B.MHASE J.)